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**MEMO ENDORSE**

LORETTA A. PRESKA  
U.S. DISTRICT JUDGE  
S.D.N.Y.

August 7, 2008

Express Mail

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DATE FILED: 8/14/08

Honorable Loretta A. Preska  
United States District Court Judge  
U.S. Courthouse, 500 Pearl Street  
New York, N.Y. 10007

Re: Carmen Otero Mc Culloch v. Town of Milan et al., 07-cv-09780  
Request for permission to file a motion.

Dear Judge Preska,

I represent the Plaintiff in the above-entitled matter. Defendants are in default for failure to file a timely Answer to the Amended Complaint. Plaintiff desires to file a motion to the Court pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure (Fed.R.Civ.P.), because the provisions of Rule 55(b)(1) are not available to her. The Court's Individual Practice Rules provide that there must be a Pre-Motion Conference in civil cases, with certain limited exceptions, prior to making most motions, including this motion. We are writing to request permission to file the motion, or, if necessary, to have the conference provided for so that we can file the motion under Rule 55(b)(2).

Rule 12(a)(4)(A) Fed.R.Civ.P. provides "if the court denies the motion (to dismiss) or postpones its disposition on the merits, the responsive pleading shall be served within 10 days after notice of the court's action". On July 21, 2008, the Court entered its Order granting in part, and denying in part the motion by Defendants to dismiss the Amended Complaint in its entirety. That Order was electronically filed on July 21, 2008 as Docket Entry No. 71 in this case. The rules for electronic filing provide that the electronic filing of a document together with the transmission of a Notice of Electronic Filing from the court constitutes filing of the document for purposes of the Federal Rules of Civil Procedure. Section 9 of the Case Filing Rules and Instructions provides that the transmission of the Clerk's Notice Of Electronic Filing shall constitute service of such document upon any filing user.

*The request is denied as moot  
counsel is again directed to confer  
and inform the Court of the discovery  
schedule they propose.*

cc: Terry Rice, Esq., U.S. Express Mail

Very truly yours,

*Kenneth McCulloch*  
Kenneth McCulloch

**SO ORDERED**

*Loretta A. Preska*  
LORETTA A. PRESKA  
U.S. DISTRICT JUDGE

August 14, 2008